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Attorneys for Defendants

COUNTY OF SAN MATEO, CHILD PROTECTIVE SERVICES OF SAN MATEO,

and CHILDREN AND FAMILY SERVICES OF COUNTY OF SAN MATEO

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

YAN HE, an individual and successor in interest to
the ESTATE OF BRIAN PAN; BIN PAN, an
individual and successor in interest to the ESTATE
OF BRIAN PAN,

Plaintiffs,

v.

COUNTY OF SAN MATEO, a public entity; CHILD
PROTECTIVE SERVICES OF SAN MATEO, a
public entity; CHILDREN AND FAMILY
SERVICES OF COUNTY OF SAN MATEO, a public
entity; JAMES NAVARRA, an individual; ALICE
NAVARRA, an individual; and DOES 1 through 100,
inclusive.,

Defendants.

Case No. 23-cv-3407

**NOTICE OF REMOVAL
PURSUANT TO 28 U.S.C. § 1441(A)**

(FEDERAL QUESTION)

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE THAT Defendants COUNTY OF SAN MATEO, CHILD PROTECTIVE SERVICES OF SAN MATEO, and CHILDREN AND FAMILY SERVICES OF COUNTY OF SAN MATEO (hereinafter “County Defendants”) hereby remove to this Court the state court action described below:

On June 20, 2023, an action was commenced in the Superior Court of California, County of San Mateo, entitled *YAN HE, an individual and successor in interest to the ESTATE OF BRIAN PAN; BIN PAN, an individual and successor in interest to the ESTATE OF BRIAN PAN, Plaintiffs, vs. COUNTY OF SAN MATEO, a public entity; CHILD PROTECTIVE SERVICES OF SAN MATEO, a public entity; CHILDREN AND FAMILY SERVICES OF COUNTY OF SAN MATEO, a public entity; JAMES NAVARRA, an individual; ALICE NAVARRA, an individual; and DOES 1 through 100, inclusive, Defendants*, as San Mateo County case number 23-CIV-01641. (A true and correct file-endorsed copy of the state court complaint is attached hereto as **Exhibit A.**)

The first date upon which County Defendants received a copy of the complaint was June 21, 2023, when County Defendants were served with a copy of said complaint and summons from the state court. (A copy of the state court summons is attached hereto as **Exhibit B.**)

I. JURISDICTION

Pursuant to Northern District of California Local Rule 3-5(a), this action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1331, and is one which may be removed to this Court by County Defendants pursuant to 28 U.S.C. § 1441(a) in that it arises, in part, under 42 U.S.C. § 1983 (see, Ex. A, Fifth Cause of Action).

II. EXPLANATION FOR NON-JOINDER OF REMAINING DEFENDANTS DUE TO NON-SERVICE OF COMPLAINT

The two remaining defendants in this case, Alice Navarra and James Navarra, have not been joined because these defendants have not been served with the complaint. Those named as defendants but not yet served with the complaint in the state court action need not join the notice of removal. See, *Destfino v. Reiswig* (9th Cir. 2011) 630 F.3d 952, 955 [co-defendants not properly served need not join]; see also, *Northern Ill. Gas Co. v. Airco Industrial Gases* (7th Cir. 1982) 676 F.2d 270, 272 [removal notice

defective if it fails to explain absence of co-defendants].

A review of the state court's docket and records establishes that, as of the date of the filing of this Notice of Removal, Plaintiffs have not filed a proof of service establishing that the Navarra co-defendants having been properly served with the state court complaint.

Additionally, on July 6, 2023, counsel for County Defendants spoke with Plaintiffs' counsel on the telephone and was informed that Plaintiffs' counsel was "still working" on getting the Navarra co-defendants served. See, *Gossmeier v. McDonald* (7th Cir. 1997) 128 F.3d 481, 489 [a defendant who has been served need not seek out and notify co-defendants who have not been served to ask them to join in the removal].

Last, a copy of the Joint Stipulation and Order granting Plaintiff Yan He's Government Code section 946.6 Petition that is on file with the state court is attached hereto as **Exhibit C**. This stipulation includes, among other things, that County Defendants will file a responsive pleading within 75 days of service of the complaint. (Ex. C, ¶ 4.)

Dated: July 7, 2023

Respectfully submitted,

JOHN D. NIBBELIN, COUNTY COUNSEL

By: /s/ Joseph F. Charles

Joseph F. Charles, Deputy

Attorneys for Defendants
COUNTY OF SAN MATEO, CHILD
PROTECTIVE SERVICES OF SAN MATEO,
and CHILDREN AND FAMILY SERVICES OF
COUNTY OF SAN MATEO